

February 10, 2004



Commissioner of Social Security
P.O. Box 17703
Baltimore, MD 21235-7703

RE: Proposed Rule regarding evidence requirements for assignment of Social Security numbers to foreign academic students in F-1 status.

Dear Commissioner:

I agree with the following statement made by Victor C. Johnson, Associate Executive Director of NAFSA made on February 2, 2004. This letter constitutes the comment of NAFSA: Association of International Educators on the above-referenced proposed rule, published in the Federal Register on December 16, 2003, requiring F-1 students who do not have an employment authorization document issued by the Department of Homeland Security's Citizenship and Immigration Services to present proof of employment in order to apply for and receive a social security number. NAFSA is the world's largest association of international education professionals in higher education, with more than 8,700 members throughout the United States and worldwide. We appreciate the opportunity to comment on this proposed change in requirements.

We share the Social Security Administration's concern for fraud and support its efforts to protect the integrity and quality of its programs, business practices, and services. In particular, we appreciate the SSA's efforts to work with the Department of Homeland Security to resolve problems regarding documentation of status, and develop workable systems to ensure timely processing of applications for eligible F-1 students.

However, the proposed rule is a step backward. It purports to solve a problem that does not exist, and will have serious negative repercussions on the thousands of legitimate F-1 students attending colleges and universities across this country, as well as on the institutions themselves. We strongly urge the SSA to reconsider this proposed rule.

Requirement is Unnecessary as Right to Employment is Inherent in F-1 Status

The proposed rule is unnecessary. Students in F-1 status are authorized for employment, under certain specified conditions, by virtue of their immigration status. Under current SSA procedures, an F-1 student who applies for an SSN is required to present evidence of age, identity, lawful F-1 alien status, and work authorization (either an EAD issued by USCIS or a letter from the school documenting the student's eligibility for employment.)

As cited in the supplementary information section of the proposed rule, under section 205(c)(2)(B)(i)(I) of the Social Security Act, the Commissioner is required to assign SSNs "to the extent practicable ... to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting



them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment.” [Italics added] This is reiterated in SSA regulations found at 20 CFR 422.107(e): “When a person who is not a U.S. citizen applies for an original social security number or a duplicate or corrected social security number card, he or she is required to submit as evidence of alien status, a current document issued by the [INS] in accordance with [its] regulations. The document must show that the applicant has been lawfully admitted to the United States, either for permanent residence or under authority of law permitting him or her to work in the United States, or that the applicant’s alien status has changed so that it is lawful for him or her to work.” [Italics added] Neither the Act nor the regulations require actual employment as a precursor to obtaining an SSN. Therefore, these students should be eligible for enumeration based simply on their application and their ability to establish their legal F-1 status in the United States.

Requirement Would Deny F-1 Students an Identification Number That Is Essential to Life in the United States

The proposed requirement would impose a significant burden on F-1 students, for whom the lack of an SSN would serve as a significant impediment to beginning their lives as full-time students in the United States. Although not the original intent of the SSN, it is hard to deny how pervasively our social institutions have organized themselves to require this specific piece of information. Many foreign students find they cannot lease an apartment, open a bank account, obtain a driver’s license, or negotiate utility services without an SSN. SSA has declared repeatedly that an SSN is not required for such things, but the reality is otherwise. Would-be landlords and front-line employees of utility companies, financial institutions, and motor vehicles departments are turning away foreign students without SSNs. Compounding the problem for these students is a lack of language skills and understanding of the cultural nuances needed to navigate through the administrative obstacles in order to obtain the requested services without an SSN. This results in incredible amounts of frustration and anger at the inability to accomplish the most basic of tasks and interferes significantly with students’ ability to successfully commence their academic programs.

The proposed requirement also would make it impossible for many F-1 students to access some on-campus jobs. Although such students may legally engage in on-campus employment, many on-campus employers will not allow them to begin work, or even to submit a job application, without an SSN, citing fines imposed by the Internal Revenue Service. On-campus employment can vary considerably in type and in duration, with many jobs best described as jobs of opportunity available for a short timeframe, such as helping during new student orientation and move-in, or translating a brief document. These kinds of jobs usually appear with little advance warning, and outside of the traditional hiring process of more formal, longer-term employment. Without an SSN, F-1 students are unable to benefit from such unexpected opportunities, as the income derived from such employment must be reported for tax purposes.



The proposed rule would be particularly burdensome for those F-1 students who receive taxable-scholarships or stipends, for which no services in return are required. In this case, the school must report the scholarship or stipend to the IRS, and the school requires that the student have an SSN for this purpose. Also, at the end of the year, the F-1 student is legally required to file a tax return with the IRS, which requires an SSN. It should be noted that F-1 students are not eligible to receive an Individual Tax Identification Number (ITIN) issued by the IRS since they are eligible to receive an SSN by virtue of their legal ability to work in the United States. And because F-1 students cannot open a bank account without an SSN, the money they receive from such scholarships or stipends is not readily accessible to them.

It is irresponsible for one agency of the United States government to arbitrarily limit SSNs to F-1 students when other agencies of the United States government, states, and localities require that the same students possess SSNs. SSA does not operate in a vacuum. It cannot ignore the reality that it is part of a web of regulatory agencies and of an economy, at all levels, through which its actions ramify. The proposed rule would trap F-1 students in a series of Catch-22 situations. We do not accept that SSNs should or need to be limited to those F-1 students with specific job offers. However, if SSA is determined to go forward with this initiative, then at a minimum, such action should not be taken until a viable alternative identification number has been established.

Requirement Would Impose Unnecessary Administrative Burdens on Schools

The proposed change would also impose a significant burden on schools, which would have to expend additional resources to help students obtain the additional documentation required by the rule or to establish their lives in the United States without an SSN. Currently, academic institutions spend considerable amounts of time informing students of the need for an SSN, instructing them on how to apply for one, and preparing individual letters verifying their immigration status. It is not clear what efforts SSA expects schools to take in verifying the offer of employment prior to issuing the letter “authorizing” the employment. Asking schools to verify the offer of employment requires schools to establish procedures and mechanisms that do not currently exist. Hiring departments not accustomed to writing such letters of confirmation invariably will require guidance from the international office on these confirmation letters, thus placing an additional burden upon the DSO.

In addition to advising F-1 students on matters pertaining to their immigration status and SSN applications, schools are often called upon to provide information on applying for driver’s licenses, apartment rentals, and bank accounts. DSOs are spending more time and resources on the students who cannot obtain an SSN as they encounter one setback after another—the inability to open a bank account, lease an apartment, obtain a drivers license, or obtain telephone or electric service. Previously these problems were not significant because very little time was needed to assist students in resolving them. Now, the time expended on these efforts has increased significantly. Should the SSA decide that it will not enumerate F-1 students unless they have a job offer, these problems will only worsen. Schools and international student advisors will spend more time assisting students with these kinds of problems, and less time advising students on their course of

study. This demonstrates further that no action should be taken unless a viable alternative identification number can be established.

Requirement Will Not Help Combat Fraud

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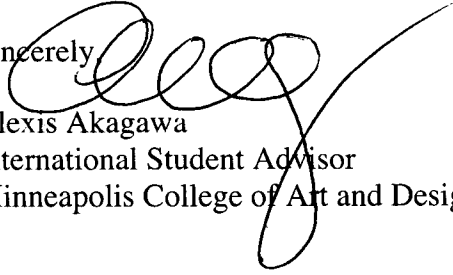
The supplementary information alleges that “some students” misuse their SSNs to engage in unauthorized employment. The SSA references its Office of Inspector General study “Using Social Security Numbers to Commit Fraud” (A-08-99-42002, May 1999) as justification for this current proposal. Serious policy changes with such a far reaching negative impact as this proposed rule should not be made on a report that is nearly five years old, and contains only “initial findings.” If students do misuse their SSNs, the Department of Homeland Security has—and uses—means at its disposal to address that issue. The proposed rule, however, is both an inappropriate and an unnecessary response to this problem. The fact that F-1 students apply for SSNs even though they do not have specific job offers does not mean that they intend to—or do—engage in fraud. Rather, they apply for SSNs for all the other reasons cited in this letter. Even under the proposed rule, any student issued an SSN would still have the theoretical ability to use it to engage in unauthorized employment. The proposed rule would not solve that problem which, to the extent it exists, is an enforcement issue for DHS. What the proposed rule would do is deny many legitimate students, who have no fraudulent intent, a necessary identification number and the ability to access future, legal employment opportunities.

Conclusion

The proposed rule would solve no problem, but would create many. We urge SSA to withdraw the proposed rule, and we stand ready to discuss with SSA workable measures to ensure the integrity of the SSN without unnecessarily and punitively inconveniencing the many legitimate students who seek a positive experience studying in the United States.

Thank you again for the opportunity to comment.

Sincerely,


Alexis Akagawa
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Minneapolis College of Art and Design